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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 16 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner listed her current employment as "data/database management." The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner includes a basis for her appeal on Part 3 of the Form I-290B Notice of Appeal and indicates that she will submit additional evidence and/or a brief to the AAO within 30 days. The petitioner filed the appeal on January 19, 2010. As of this date, more than a year later, this office has received nothing further. As such, we will adjudicate the appeal based on the record before the director and the petitioner's statement on the Form I-290B. In reviewing the director's decision, we withdraw any implication that, for the benefit sought, a petitioner must demonstrate extraordinary or exceptional ability by submitting nationally or internationally recognized awards or high remuneration, evidence the director explicitly requested even though the petitioner is an advanced degree professional.[1] Nevertheless, we uphold the director's determination that the petitioner has not established that her achievements in her field warrant waiving the alien employment certification process in the national interest. As noted by the director, education and experience can be enumerated on an application for alien employment certification and do not warrant a waiver of that requirement in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare

[1] Lesser nationally or internationally recognized awards are one type of evidence that may be submitted to support eligibility as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. 8 C.F.R. § 204.5(h)(3)(i). High remuneration, depending on the level, is evidence that may be considered as evidence of extraordinary ability or exceptional ability pursuant to section 203(b)(2) of the Act. 8 C.F.R. §§ 204.5(h)(3)(ix), (k)(3)(ii)(D).

> of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer.
>
> > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in Management Information Systems from [redacted] The director did not contest that the petitioner's occupation falls within the pertinent regulatory definition of a profession. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national

interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. We include the term "prospective" to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The petitioner did not initially explain what occupation she would pursue. Rather, she noted her Master's degree and stated that she was studying for a Ph.D. in Technology Management. In response to the director's request for additional evidence, the petitioner stated:

> First, I am working towards the completion of my doctoral program's examination and defense of my dissertation by the end of next year. My future interest is to either join [a] college/university as a member of faculty administration; or to join the [National Council for the Accreditation of Teacher Education (NCATE)] (or any other accreditation body's) review team in the area of Specialized Professional Assessment with special emphasis in distance learning and assessment of technology based learning approach. . . . I am currently working under the direction of my academic advisor in the review/evaluation of online delivered courses' curricula, instructional design and assessment.
>
> Second, to actively engage in research on changing technology and how such change impacts distance and online learning, instructional design, delivery, and assessment.
>
> Third and lastly, I will continue to engage in volunteer work in the areas of education (including mentoring, etc.), and community involvement.

The director did not contest that the petitioner works in an area of intrinsic merit or that the proposed benefits of her work would be national in scope. Student visas exist to allow aliens to pursue higher education in the United States. Thus, a waiver of the alien employment certification process for an employment-based immigrant visa is not in the national interest for the purpose of allowing an alien to pursue education in the United States. Regarding her future employment plans, the petitioner does not explain how working as an administrator for an individual college or university would have benefits that are national in scope. The proposed benefits of the petitioner's research have more of a potential to be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest

threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Initially, the petitioner noted her Master's degree and her pursuit of a Ph.D. and stated: "It is my sincere hope that my application will be considered favorably as the level of my education and continued self-improvement make me an asset to this great nation." Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Id.* at 219, n.6. The petitioner has provided no legal authority supporting the proposition that the national interest waiver was intended as a blanket waiver for all aliens seeking a Ph.D. in the United States. As stated above, student visas exist to allow for the pursuit of higher education.

In response to the director's request for additional evidence, the petitioner asserts that she has "an edge" over an available U.S. worker with the same qualifications because of her experience in different educational systems, her "continued self improvement in academic and technical fields" through her pursuit of a Ph.D., and her "enhanced technical, management, social, and interpersonal skills which are core prerequisites needed for effective leadership." The petitioner then lists her experience, none of which is documented in the record. Specifically, the regulation at 8 C.F.R. § 204.5(g)(1) states that evidence of experience "shall" consist of letters from employers.

The beneficiary's experience outside of the United States is not persuasive. As a rule, an employer must file a petition for aliens who are members of the professions with an advanced degree, including a job offer and an approved alien employment certification. As all advanced degree professional aliens are, by definition, not U.S. citizens, they all have at least some professional or at least cultural experiences outside the United States. If we were to conclude that such experience warranted a waiver of the alien employment certification process, the waiver would be the rule rather than the exception Congress intended. Rather than merely attesting to her broad experiences, the petitioner must demonstrate a past record of success with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Even if the petitioner had documented all of her experience, the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) indicates that ten years of progressive experience is one type of evidence that may be used to establish exceptional ability. Because exceptional ability, by itself, does not justify a waiver

of the alien employment certification requirement, arguments hinging on the degree of experience required for the profession, while relevant, are not dispositive to the matter at hand. *Id.* at 222.

The petitioner indicated in her response to the director's request for additional evidence that she received the "President's Award for Service Excellence" in June 2007. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). The record does not contain the award. The certificates of appreciation in the record will be addressed below.

In support of the petitioner's self-serving statements, the petitioner has submitted (1) certification from NCATE confirming that she has completed her Board of Examiners training, (2) a September 29, 2003 letter from [redacted] State University welcoming the petitioner to their Ph.D. in Technology Management Program, (3) the Professional Standards for NCATE, (4) her Master's degree, (5) her 1998 Higher Diploma in Human Resources Management from the Kenya National Examinations Council, (6) her Bachelor of Science in Business Administration from the United States International University, (7) her Information Systems Analyst Certificate from [redacted] State University, (8) a certificate from Reading is Fundamental (RIF) acknowledging her "contributions as a member of the 2005 Operating Agreement Committee," (9) a certificate of appreciation from RIF recognizing the petitioner's "efforts to organize the first celebration at RIF of Black History Month" and (10) her self-serving curriculum vitae.

The petitioner's education and training cannot establish eligibility for the benefit sought. As stated above, academic credentials can be articulated on an application for alien employment certification and do not warrant a waiver of that process. In addition, special or unusual knowledge or training, while perhaps attractive to a prospective U.S. employer, does not inherently meet the national interest threshold. *NYSDOT,* 22 I&N Dec. at 221.

Regarding the certificates from RIF, formal recognition from one's peers is merely one type of evidence that a petitioner may submit to establish eligibility as an alien of exceptional ability. As stated above, exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement. Thus, arguments hinging on formal recognition, while relevant, are not dispositive to the matter at hand. *Id.* at 222. The record contains no evidence that the petitioner's recognition from RIF is indicative of the petitioner's influence in the field rather than her limited contributions to RIF's Operating Agreement Committee and an office celebration.

On appeal, the petitioner asserts that the director erred in noting the lack of letters from U.S. agencies or national organizations. The petitioner cites a 1993 memorandum that predates *NYSDOT,* 22 I&N Dec. at 215, for the proposition that "it is entirely possible that a case for the national interest could be argued and supported through documentation other than third party testimony." While we agree that a petitioner may establish evidence of her influence in the field through evidence other

than reference letters, we note that the director, while noting the lack of letters, went on to review the other evidence submitted, concluding that the evidence was insufficient.

Also on appeal, when addressing her past record, the petitioner merely cites several unpublished decisions by this office. The petitioner does not explain how her petition is similar to those petitions the AAO has approved in the past. The fact that the AAO has sustained the appeals of other petitioners does not create a presumption that the instant petition is approvable. Regardless, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Ultimately, the evidence of record documents the petitioner's education and training, factors that can be enumerated on an application for alien employment certification. Thus, the petitioner has not sufficiently documented why USCIS should waive that requirement in the national interest.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.